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UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA
(San Jose Division)

In re:) Case No. 11-60405

ZIA JAMAL NOORZOY and CECELIA A.) CHAPTER 7

AUSTIN,)

)

)

Debtor.)

AISHA A. KRECHUNIAK, individually,) Adversary Proceeding

and as Trustee For THE KRECHUNIAK,) No. 12-05016

AISHA A. 2001 TRUST,)

Plaintiffs,)

)

v.)

ZIA JAMAL NOORZOY and CECELIA A.)

AUSTIN,)

Defendants.)

**RENEWED MOTION FOR ENTRY OF
JUDGMENT**

Date: September 22, 2015

Time: 1:30 p.m.

**Court: United States Bankruptcy
280 South First St., Rm 3099
San Jose, CA**

Judge: Hon. Stephen Johnson

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COMES NOW, Campeau Goodsell Smith, L.C., and submits the following motion
and memorandum of points and authorities as follows:

I. Summary of Motion.

This is a renewed motion by Plaintiffs AISHA A. KRECHUNIAK, individually, and
as Trustee For THE KRECHUNIAK, AISHA A. 2001 TRUST (“Plaintiffs”) for entry of

RENEWED MOTION FOR ENTRY OF JUDGMENT

1 judgment against Zia Jamal Noorzoy (“Noorzoy” or “Defendant”) pursuant to a November 6,
2 2014 Memorandum of Settlement (“Memorandum of Settlement”) and a July 31, 2015
3 Judgment entered into an underlying state court action (“State Court Judgment”). Said
4 motion is made pursuant to 11 U.S.C. 105 and on the grounds that Noorzoy executed the
5 Memorandum of Settlement, the Memorandum of Settlement provided that the settlement
6 shall be non-dischargeable in bankruptcy, on July 31, 2015 the state court entered the State
7 Court Judgment, and enforcement must no longer be stayed in light of the settlement, general
8 discharge order, and entry of a final decree.
9

10 **II. Summary of Facts.**

11 **A. Bankruptcy Case.**

12 On November 10, 2011, a voluntary bankruptcy petition was filed by Debtors ZIA
13 JAMAL NOORZOY and CECELIA A. AUSTIN under Title 11 of the United States Code
14 commencing this Chapter 7 bankruptcy (“Debtors” or “Defendants”) (“Bankruptcy Case”).

15 **B. Adversary Proceeding and Related State Court Action.**

16 On January 31, 2012 Plaintiffs commenced this Adversary Proceeding pursuant to 11
17 U.S.C. 523 for a determination that Plaintiffs debts are non-dischargeable.

18 This Adversary Proceeding is substantially similar to and related to pending State
19 Court Action.

20 On April 4, 2012 the court granted Plaintiffs’ Motion For Relief From Stay and
21 ordered, in pertinent part, that relief from the automatic stay was granted as to the State Court
22 Action effective April 16, 2012 in all respects as to certain causes of action set forth in
23 Aisha’s Cross Complaint For Damages And Equitable Relief: Breach of Fiduciary Duty,
24 Conversion, Fraud, and Intentional Infliction of Emotional Distress so the parties thereto may
25 proceed to final judgment as against the Debtors (relief was not granted as to the State Court
26 Action’s causes of action: Breach of Contract, Breach of The Implied Covenant of Good
27 Faith and Fair Dealing, Accounting, Negligence, Negligent Misrepresentation, and Legal
28 and/or Equitable Indemnity) (Docket#57 Main Case).

1 Since that time this Adversary Proceeding has essentially been held in abeyance
2 pending the State Court Action.

3 **C. Memorandum of Settlement and Non-Compliance/Breach.**

4
5 On November 6, 2014 Plaintiffs and Defendant executed a Memorandum of
6 Settlement which provided, in pertinent part, that Defendant shall pay Plaintiff the total sum
7 of \$600,000 as follows: (a) \$100,000 by December 31, 2014; (b) 10% of net commissions
8 from April 1, 2015 and thereafter; (c) the balance of \$500,000 no more than five (5) years
9 from January 1, 2015; (d) execution of a stipulated judgment against Defendant in the
10 amount of \$850,000; (e) that the settlement and stipulated judgment shall be non-
11 dischargeable in bankruptcy; and (f) the settlement shall be confidential. Defendant did not
12 perform pursuant to the Memorandum of Settlement. A true and correct copy of the
13 Memorandum of Settlement is attached to the Declaration of William J. Healy as Exhibit A.

14 **D. Prior Motion For Entry of Judgment.**

15 On April 22, 2015 Plaintiffs filed a Motion for Entry of Judgment (Doc#22). On June
16 2, 2015 the court held a hearing and, as indicated in the official transcript, elected not to
17 grant the motion at that time. A true and correct copy of the official transcript on the hearing
18 on the original Motion for Entry of Judgment is attached to the Declaration of William J.
19 Healy as Exhibit B.

20 **E. State Court Judgment.**

21 Following the June 2, 2015 hearing before this court, Plaintiffs returned to state court
22 to enforce the Memorandum of Settlement and obtain a judgment. On July 31, 2015, upon
23 Plaintiffs' motion and over Defendant's opposition/objection, the state court entered
24 judgment in the State Court Action in favor of Plaintiffs and against Defendant. A true and
25 correct copy of the State Court Judgment is attached to the Declaration of William J. Healy
26 as Exhibit C.

1 **III. The Court Must Enter Judgment Pursuant to the Memorandum of Settlement and**
2 **State Court Judgment.**

3 Pursuant to the terms of the Memorandum of Settlement and the court's implied
4 powers set forth in 11 U.S.C. 105 the court must enter judgment pursuant to the terms of the
5 Memorandum of Settlement and State Court Judgment.

6 **IV. The Court Must Allow Enforcement of the Judgment.**

7 The April 4, 2012 Order On Motion For Relief From Automatic Stay (Docket#57
8 Main Case), which allowed the State Court Action, in part, to proceed, also indicated that
9 "Enforcement of any judgment against the Debtor in the State Court Action is stayed pending
10 further order of this Court . . ."

11 Except for this Adversary Proceeding (and a similar adversary proceeding), the
12 Debtors received a discharge on June 13, 2013 (Docket#113 Main Case), a Final Decree was
13 entered on April 1, 2014 (Docket#120 Main Case), and the bankruptcy case was closed on
14 April 1, 2014. Except for potential application of the April 2, 2012 order, the automatic stay
15 terminated no later than April 1, 2014 (11 U.S.C. 362 (c)(1) and (2)).

16 Accordingly, further delayed enforcement of the Memorandum of Settlement and State
17 Court Judgment must be avoided.

18 **V. Conclusion.**

19 Therefore, Plaintiffs respectfully request that the renewed motion be granted and
20 judgment entered in favor of Plaintiffs and against Defendant Noorzoy pursuant to the terms
21 of the Memorandum of Settlement and State Court Judgment and terminating any stay on
22 enforcement.

23 Dated: August 4, 2015

24 CAMPEAU GOODSELL SMITH
25 By: /s/ William J. Healy
26 William J. Healy